IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

MFA.No. 786 of 2000

OPMV.1032/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, TIRUR
.....

APPELLANT/PETITIONER:

SOUDAMINI AMMA C.,
W/O. LATE GANGADHARAN NAIR,
CHARAPARAMBATH, PAYIMBRA P.O.,
KURUVATTOOR, KURUVATTOOR
AMSOM, DESOM.

BY ADV. SRI.N.JAMES KOSHY

RESPONDENTS/RESPONDENTS:
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1. **C.MOIDEEN, S/O. MOIDU,**
VEGERABLE STORES,
STALL NO. B2, MARKET-TIRUR,
MALAPPURAM DIST., R.C. OWNER OF
MINI LORRY KL-10/A, 1638.

2. **MOHAMMEDKUTTY, S/O. KUTTY HASSAN,**
AGED 25 YRS, MILAMPAD HOUSE,
NIRAMARUTHUR, TIRUR,
DRIVER OF MINI LORRY KL10A 1638.

3. **UNITED INDIA INSURANCE CO. LTD.,**
BRANCH D- SNITHA BUILDINGS,
II FLOOR, DB ROAD, R.S. PURAM,
COIMBATORE- 641 002.,
POLICY NO. 170204/0/31/21/7855/93.

BY ADV. SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW ---R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 28/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A. No. 786 of 2000

Dated this the 28th day of May, 2007

Judgment

Koshy, J.

Appellant met with a motor accident and sustained serious injuries. She claimed compensation of Rs.2,00,000/-. Tribunal found that the accident occurred due to the negligence of the driver of the vehicle duly insured by the third respondent insurance company. However, total compensation awarded was only Rs.39,000/-. Only quantum of compensation was disputed herein.

2. Ext.A13 is the copy of the wound certificate which shows that she had closed fracture shaft of left femur. Ext.A14 is the index card issued from the Medical College Hospital and Ext.X3 is the case sheet maintained in the Medical College Hospital. She was thereafter admitted in the District Co-operative Hospital, Kozhikode. An operation was done. Bone grafting was also done. She continued treatment in the District Co-operative Hospital as well as in the Medical

College Hospital continuously from the date of accident till 21.8.1985 as can be seen from Exts.A15 to A17. Ext.A18 is the disability certificate which reads as follows:

> "Smt.Soudamini Amma, 44 years, was admitted on 16.1.1994 following alleged road traffic accident. (IP-2175). She had:
>
> 1. Fracture shaft of femur (L);
> 2. Fracture neck of femur (L);
> 3. Fracture ulna upper 1/3.
>
> She was discharged at request to continue treatment elsewhere on 19.1.94. As per records available open reduction and plate and screw fixation of femur, screw fixation of femoral neck and open reduction and squire nail fixation of ulna was done on 25.1.1994.
>
> She was readmitted in Medical College Calicut with delayed union fracture shaft of femur on 11.8.94. Bone grafting was done. She was discharged on 8.9.94.
>
> Now, on examination she is able to walk without support. Knee joint flexion is 70 degree. Extension is full. Terminal 10 degree of hip flexion is restricted. Both internal and external rotations of hip are restricted by 15 degree. Fracture shaft of femur has united clinically and

radiologically. She is not able to squat on the floor.

(L) Forearm - fracture ulna has united clinically and radiologically. Elbow movements are full. Finger flexion is terminally restricted. Grip is weak on (L) side.

Permanent disability due to above = 12% (Twelve percent)."

The above permanent disability certificate was not accepted only on the sole reason that the doctor was not examined and only Rs.5,000/- was awarded for disability and loss of earning power. Claimant was a house wife. Even though she stated that she was a tailor and was earning Rs.2,000/- per month, there was no evidence to show the same, but, service of a house wife cannot be undervalued. In any event, we are of the opinion that an amount of Rs.15,000/- per year (Rs.1,250/- per month) could be fixed as the notional income of the claimant. Considering the nature of injuries, nature of treatment like open reduction surgery, nail fixation, bone grafting and after effect of the above as mentioned in the medical certificate issued by Dr.Gopakumar, Assistant

Professor of Orthopaedics, Medical College, Calicut, the disability has been fixed at 12%. Since she has completed the age of 45, 15 can be fixed as the multiplier taking guidelines from the second schedule. If that be so, compensation payable will be Rs.15000 x $\frac{12}{100}$ x 15 = Rs.27,000/-. After deducting Rs.5,000/- awarded for disability, balance payable will be Rs.22,000/-. The tribunal has stated that even though she was under treatment for one year, loss of earning for six months was granted at the rate of Rs.500/- per month. We have fixed Rs.1,250/- as the monthly income. If that be so, for the completely disabled period she will be entitled to Rs.4,500/- more under this head. So, additional compensation payable will be Rs.26,500/-. We see no ground to grant enhancement of compensation under other heads even though it was argued that only meagre amount was awarded under those heads. The additional compensation of Rs.26,500/- should be deposited by the third respondent insurance company within three months from the date of receipt of a copy of this judgment with 9% interest from the date of application till its

deposit. On deposit of the amount, appellant is allowed to withdraw the same.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A. NO.786/2000

JUDGMENT

Dated:28th May, 2007